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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

PROGRESSIVE NORTHERN  
INSURANCE COMPANY,

Plaintiff(s),

v.

GAMALIEL MORALES-ELIZALDE  
and AMY CHANDLER,

Defendant(s).

2:13-CV-2296 JCM (GWF)

**ORDER**

Presently before the court is defendant Amy Chandler's motion to dismiss plaintiff Progressive Northern Insurance Company's ("Progressive") complaint for declaratory relief. (Doc. # 6). Plaintiff has responded to the motion to dismiss. (Doc. # 8).

**I. Background**

An automobile incident occurred between defendant Gamaliel Morales-Elizalde and defendant Chandler on October 22, 2010. (Doc. # 1). Later, Chandler initiated an injury liability claim against Morales. Chandler retained the Powell Litigation Group ("Powell"), who instructed Progressive, Morales' insurer, to pay out the \$15,000 "each person" policy limit, or else Chandler's counsel would "deem the policy 'uncapped'" and thus, according to Powell, "expose [its] insured to an excess judgment." (Doc. # 1 at 3-5).

...

1 Progressive sent a letter on December 9, 2010, stating the medical information provided by  
 2 Chandler's counsel indicated that Chandler had "only received minimal care" and accordingly  
 3 offered an \$8,545 settlement. (Doc. # 1 at 5). Progressive received a letter from Powell on  
 4 December 14, 2010, detailing additional medical treatment, and demanded a settlement of \$15,000  
 5 within five days. In response, Progressive increased its settlement offer to \$9,100, explaining that  
 6 the information provided by Powell showed a treatment history of "one emergency room visit, one  
 7 visit with a medical doctor, and six visits to a chiropractor." (Doc. # 1 at 6). Powell responded on  
 8 December 17, 2010, expressing its belief that the coverage had been "uncapped." (Doc. # 1 at 6).

9 Progressive provided a legal defense for Morales against Chandler's personal injury suit in  
 10 state court and found during the discovery process that "Chandler had begun treating for a shoulder  
 11 injury, and that she ultimately underwent surgery for that condition in June 2011" as well as  
 12 additional medical treatment. (Doc. # 1 at 6). Progressive then offered the full \$15,000 policy limit  
 13 as settlement but was rebuffed by Chandler's counsel.

14 Progressive believes that Chandler seeks "an excess judgment against Morales[], and [will]  
 15 attempt to impose liability for the entry of that judgment against Progressive." (Doc. # 1 at 7). As  
 16 a result, Progressive seeks declaratory relief that its potential liability from an adverse ruling in the  
 17 underlying state case cannot exceed the \$15,000 policy limit. (Doc # 1).

18 In the instant motion, defendant Chandler requests that the court decline to exercise  
 19 jurisdiction over this case due to the pending action in Nevada state court. (Doc. # 6). However,  
 20 defendant Chandler asserts that Progressive's complaint for declaratory relief is "premature" and that  
 21 Progressive should submit the present issue to state court. (Doc. # 6 at 5, 13).

## 22 **II. Legal Standard**

23 First, the Declaratory Judgment Act provides that "any court of the United States, upon the  
 24 filing of an appropriate pleading, may declare the rights and other legal relations of any  
 25 interested party seeking such declaration." 28 U.S.C. § 2201(a). Under the Declaratory Judgment  
 26 Act, district courts have "unique and substantial discretion" to decline to exercise jurisdiction over  
 27 an action for declaratory relief. *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286 (1995). When  
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1 considering whether to rule on a declaratory relief complaint, “the normal principle that federal  
2 courts should adjudicate claims within their jurisdiction yields to considerations of practicality and  
3 wise judicial administration.” *See id.* at 288.

4 Second, the district court should assert its broad discretion within the declaratory relief realm  
5 with particular attention to actions impacting unresolved state cases. *See Huth v. Hartford Ins. Co.*,  
6 298 F.3d 800, 803 (9th Cir. 2002). Indeed, “[a] district court should avoid needless determination  
7 of state law issues; it should discourage litigants from filing declaratory actions as a means of forum  
8 shopping; and it should avoid duplicative litigation.” *Id.*

9 Next, a case or controversy is ripe if “the facts alleged, under all the circumstances, show that  
10 there is a substantial controversy, between parties having adverse legal interests, of sufficient  
11 immediacy and reality to warrant the issuance of a declaratory judgment.” *MedImmune, Inc. v.*  
12 *Genentech, Inc.*, 549 U.S. 118, 127 (2007) (quoting *Md. Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S.  
13 270, 273 (1941)). Federal courts “do not give advisory opinions.” *Hunt v. State Farm Mut. Auto.*  
14 *Ins. Co.*, 655 F. Supp. 284, 286 (D. Nev. 1987) (citing *Coffman v. Breeze Corps.*, 323 U.S. 316, 324  
15 (1945)); *see also* U.S. Const. art. III, § 2. Furthermore, if the plaintiff’s claims are merely  
16 speculative, asserted to protect potential future rights, the court cannot grant declaratory relief. *See*  
17 *Hunt*, 655 F. Supp. at 286.

18 Finally, to satisfy the federal requirement for a controversy, state law illustrates whether the  
19 plaintiff’s alleged controversy “is real and immediate.” *Id.* In other words, state law must show that  
20 the conflict is one that “involves present, as opposed to future or speculative, rights.” *See id.*  
21 “[U]nder Nevada law, declaratory relief between a third party claimant and an insurer is proper only  
22 after the third party obtains a tort judgment against the tortfeasor.” *Vignola v. Gilman*, 804 F. Supp.  
23 2d 1072, 1077 (D. Nev. 2011) (citing *Knittle v. Progressive Cas. Ins. Co.*, 908 P.2d 724, 726 (Nev.  
24 1996). Moreover, [t]he rights of a tort claimant against a tortfeasor’s insurer do not mature until the  
25 tort claimant obtains a judgment against the tortfeasor.” *Id.* (citing *Roberts v. Farmers Ins. Co.*, 533  
26 P.2d 158, 159 (Nev. 1975)).

27 . . .

Similarly, as the underlying state case between the insured and Chandler remains unresolved, an action seeking to determine Progressive's legal rights against Morales is duplicative, impractical, and speculative. *See Wilton*, 515 U.S. at 288; *Huth*, 298 F.3d at 803; *Hunt*, 655 F. Supp. at 286. Thus, the court will decline to exercise jurisdiction over the complaint for declaratory relief against Morales.

IT IS FURTHER ORDERED that plaintiff's complaint for declaratory relief (doc. # 1) is DISMISSED WITHOUT PREJUDICE.

James C. Mahan  
UNITED STATES DISTRICT JUDGE